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Noes—cont.

21. Rao Sahib S. Ellappa Chettiar.	31. Mr. B. Ramachandra Reddi.
22. Rao Bahadur Cruz Fernandez.	32. Diwan Bahadur M. Krishnan Nayar.
23. Rao Sahib P. V. Gopalan.	33. Rao Bahadur P. Raman.
24. Mr. L. C. Guruswami.	34. Mr. R. Srinivasan.
25. The Zamindar of Kalikote.	35. " R. Veerian.
26. Rao Bahadur K. Krishnaswami Nayudu.	36. Diwan Bahadur W. Vijayaraghava Mudaliyar.
27. Mr. R. Madanagopal Nayudu.	37. Mr. Abbas Ali Khan.
28. " K. Prabhakaran Tampan.	38. " Qadir Muhi-ud-din Sahib.
29. " G. Premayya.	39. " Abdul Wahab Sahib.
30. " K. Raghuchandra Ballal.	

26 hon. Members voted for the motion and 39 against. The motion was lost.

POWERS OF PUNISHMENT TO PRESIDENTS OF BENCH COURTS.

4 p.m. Rao Sahib P. V. GOPALAN :—“ I beg to move the resolution standing in my name which runs as follows :—

‘ That this Council recommends to the Government that honorary presidents of first-class bench courts be invested with the same powers of appointing and punishing their subordinates as are conferred on the presidents of local boards and chairmen of municipal councils with regard to their subordinates. ’

“ In this connexion I beg to submit that it is an extension of the principle of local self-government to invest the local public with the jurisdiction to try criminal offences committed by the people, and so long as local bodies exercise uncontrolled jurisdiction over their subordinates, efficiency of service requires that the subordinates of bench courts should be placed under the control of the presidents. At present the president has no powers of punishing or appointing his subordinates and naturally that amount of obedience that one would expect from a subordinate cannot be expected from them who are said to be under the control of the executive officers of the district.

“ I shall quote one single instance to give an idea of the work done by a bench court in a year and the work done by a deputy tahsildar in order to convince this House how essential and necessary it is for the Government for favourably considering this resolution and thus approve of the work done by the presidents of bench courts who are in most cases retired deputy tahsildars. Although the Government give power to Tahsildars and deputy tahsildars under Board’s Standing Order No. 132 to fine their subordinates to the extent of Re. 1, they do not give any power to the bench court presidents. The figures are these. In one year in a certain bench court there were 2,500 cases and the amount of fine recovered was Rs. 5,000 ; but the cost of establishment was only Rs. 600. Whereas in the case of a certain deputy tahsildar’s court there were 350 cases, the fine recovered was Rs. 2,750 and the cost of establishment was Rs. 4,000.

“ I commend this resolution for the acceptance of this House.”

Rao Bahadur CRUZ FERNANDEZ :—“ I second the resolution.”

* The hon. Sir C. P. RAMASWAMI AYYAR :—“ I hope to be able to demonstrate to the satisfaction of the hon. the Mover of this resolution that to accept it would not conduce to the interests of the proper working of the panchayat

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courts themselves and would produce many other difficulties also. I shall arrange my arguments in order. In the first place, no specific complaint has been received from any president till now about the inconvenience arising out of this matter. You cannot really compare a court which has only one clerk—in most of these panchayat courts you have one or at the most two clerks and one peon—with local boards or bodies which have a large establishment. A more important matter which I may mention is that in order to get fairly efficient men, these courts are empowered to utilize for their work part-time employees, employees of Collectors' offices or other offices who are ordered to go and do work in the panchayat courts. If we do not adopt this expedient, we should have a full-time establishment for all the panchayat courts and pay them proportionately a high salary which means the raising of the standard of cost on panchayat courts which it is the aim and effort of most of the people of this Presidency to curtail. What we generally do with regard to these panchayat courts is that we lend one or two clerks of certain Government offices as part-time workers and they get some allowance. The services of these clerks are lent not with reference to their status as first or the second class bench courts, but with reference to the heaviness of their file. It seems to me that if we want to have a permanent establishment, no efficient men would be forthcoming to take up service in these courts as there will be only one or two clerks and a peon and as they will have no chances of promotion. That is the difficulty. We also thought that the utilization of the services of clerks in Government offices will conduce to the convenience and advantage of both the establishments of panchayat courts and Government offices. For these reasons I invite the hon. Member to realise the difficulties in this matter and if necessary to go more thoroughly into the matter. Then if he finds that in any particular court a full time establishment is necessary, the Government will do all that it can possibly do in the matter. In most of the courts there is not an overwhelming amount of work. If on the other hand in any particular bench court there is a heavy file, and if the work of that court calls for a full time clerk it is a very different matter. But on this basis to accept a proposition that throughout the whole presidency there should be full time establishment for all the panchayat courts would lead to embarrassment.

"I shall also point out other difficulties. Supposing that we want to give powers of disciplinary control and supervision to the president of a panchayat court, then what will happen? We must give him a separate establishment and he will have powers of fining his establishment; but supposing his clerk does not work properly, he will not be able to remove this clerk and get a substitute for the small pay which the panchayat courts can afford to pay. What is done now is that another clerk is brought from a Government office. If there is a permanent establishment and if a clerk takes leave for six months there will be difficulty, because nobody else will come for a small pay and that too for a short period of six months. So if you want a permanent establishment for a particular panchayat court, this may be done, but if you bring forward a general proposition and say that all the panchayat courts in the Presidency must have permanent establishments of their own, the proposal will militate against the interests of both the establishments of panchayat courts and Government offices."

Mr. J. A. SALDANHA:—"Sir, I have got an amendment to move. I am fully aware of the difficulties and embarrassments which, the hon. the

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Law Member has pointed out, would be produced in case the resolution is accepted. My amendment is this:—

‘ For the words “ *of first class bench courts . . . with regard to their subordinates* ” substitute the words “ *of bench courts be invested with the same powers of fining and blackmarking their subordinates as are conferred on heads offices under S.O. No. 132 of the Board of Revenue with regard to their subordinates* ”. ’

“ I may inform this House that certain presidents of panchayat courts have got a feeling that the clerks and establishments given to them by the District Magistrate or Divisional Officer think that they are independent of the control and supervision of the presidents of panchayat courts.”

* The hon. Sir C. P. RAMASWAMI AYYAR :—“ The hon. Member’s amendment has been placed in my hands just now. It seems to me that the difficulty pointed out by the hon. Member has already been met by me when I said that whenever a president of the bench court does not want a clerk who is insubordinate he has only to report to the officer concerned and instructions will be given to the latter to take that clerk back and give another clerk instead.”

Mr. J. A. SALDANHA :—“ I am aware of that. There are few presidents of bench courts who will report against the insubordinate behaviour of their subordinates. If the subordinate establishment of bench courts should be made to feel that they are under the control of the presidents of those courts, why should not the latter be given some powers of punishing their subordinates? I may draw the attention of the House to the Board’s Standing Order in this connexion which confers on tahsildars and deputy tahsildars power to fine their subordinates to the minimum extent of one rupee under the circumstances. The bench court presidents rightly feel that they have not got the same power as a tahsildar or a deputy tahsildar. This is an invidious distinction and I urge that this should be done away with. I would, therefore, bestow upon the bench magistrates the same power as the heads of departments have got, namely, blackmarking and then reporting to the superior authorities against the conduct of their subordinates.”

* Rao Bahadur A. S. KRISHNA RAO PANTULU :—“ In seconding this amendment I must make my position clear. The presidents of bench courts should be given this power on the understanding that they have complete control over their establishment. In the special cases which the hon. Member from Mangalore has pointed out the establishment of the bench court will be at present under the control of some one else. If the presidents of bench courts were also to be given some powers of control, it will lead to a system whereby two sets of officers have got the power of fining or blackmarking. So it must be limited to those cases where the presidents of bench courts are given complete control over their establishments.”

* The hon. Sir C. P. RAMASWAMI AYYAR :—“ I am afraid I did not make myself clear in the earlier portion of my remarks. I said that all heads of offices from which those employees were lent to bench courts will receive instructions to remove these clerks, take them back into their establishment and substitute other clerks instead, if the presidents of bench courts were

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not satisfied with their work. My hon. Friend from South Kanara said that presidents of bench courts were so merciful or so complacent that they were not in a position to persuade themselves to resort to the drastic remedy of reporting against their subordinates in the manner I have suggested.

"But if presidents of bench courts have the bowels of mercy so developed in them as to be unable even to send away a man who would not do work, they would not have sufficient nerve to put the blackmark wherever it is to be put or to fine wherever a fine is necessary. Now, it seems to me that all this elaborate system of blackmarking and fining is excellent when there are large numbers of clerks to be dealt with. But when there is only one clerk who is functioning in a bench court, I do not understand the point of this fining and blackmarking. If the clerk is not satisfied with his lot or the president does not get on with him, he goes away and another man comes in. So, it seems to me that we are wasting too much powder and shot upon very indifferent fowl."

The hon. the DEPUTY PRESIDENT:—"Is Mr. Saldanha withdrawing his amendment?"

Mr. J. A. SALDANHA:—"I want to reply to that argument, Sir. Here there is no question of powder and shot. Whether a president of a bench court has got the power of using it, is the question. For purposes of discipline he should be given power to punish; so, the powder and shot are there but he must be given the power of using it when necessary. I think that is sufficient to bring home to this House the point of my amendment. What happens at present is this. There is a fear that the bench court presidents have no power at present of using the powder and shot. That makes the clerks somewhat defiant to the president of the court. What I contend is that he should have the power which the tahsildar has. A tahsildar does not appoint his subordinates. He gets his establishment from the District Magistrate. So if a tahsildar has got the power of fining, I do not see any reason why the president of a bench court should not have the same power, i.e., the power of using the powder and shot. It is seldom used, but the power must be there. Here the Standing Order of the Board of Revenue distinctly lays it down that the power should be seldom used."

* The hon. Sir C. P. RAMASWAMI AYYAR:—"May I point out that a tahsildar has about 12 or 15 clerks and about 30 other subordinates working under him? But it seems to me that there is no point in energising on only one clerk in the way of fining and black-marketing him."

* The hon. the DEPUTY PRESIDENT:—"Does the mover of the motion accept the amendment?"

Rao Sahib P. V. GOPALAN:—"Mr. Deputy President, Sir, after having moved the resolution and after hearing the hon. the Law Member and especially the assurance which he has given to me, while thanking Mr. Saldanha for his amendment and all that he has said (laughter), I beg leave to withdraw my motion. Mr. Saldanha's amendment is part and parcel of my resolution and since I attach more importance to the assurance of the hon. the Law Member, I wish to withdraw the resolution."

The motion was by leave withdrawn.